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Agenda item 115

SITUATION OF HUMAN RIGHTS IN ESTONIA AND LATVIA

Letter dated 23 November 1993 from the Permanent
Representative of the Russian Federation to the
United Nations addressed to the Secretary-General

I should like to draw your attention to a question which is high among the priorities of the foreign policy of the Russian Federation - that of the situation of the Russian-speaking population in States established within the territory of the former USSR, especially in Estonia and Latvia.

The Russian Federation is making a sincere effort to develop friendly and mutually advantageous relations with Estonia and Latvia, and is interested in maintaining and strengthening good-neighbourliness with them. This is borne out by a number of serious compromise steps which we took recently in connection with another important issue, namely the withdrawal of troops, and declared our readiness to complete the withdrawal by 31 August 1994.

The Russian leadership has repeatedly drawn the attention of the United Nations and other international organizations to the intolerable situation relating to the protection of the rights and interests of ethnic Russians in those two Baltic countries. In essence, as in the past, velvet-gloved "ethnic cleansing" is being put into practice there in the guise of the false slogan of restoring "historical justice".

From the beginning of this year alone, the Estonian authorities have adopted a whole series of legislative and administrative acts which, contrary to the recommendations of international experts, have truly worsened the situation of a significant proportion of the population. In specific terms, they involve laws pertaining to foreigners and to elementary and secondary schools, and decisions adopted by the Tartu and Tallinn municipal councils. There is the unconcealed intention to set in motion a mechanism for deporting war veterans. A recent glaring example of this occurred when a whole group of such veterans in the Estonian town of Viljandi were deprived of their residence permits.

In Latvia, the local authorities are in essence already resorting to deportation. According to press reports, the Department of Citizenship and Immigration has drawn up about 1,000 deportation orders - "instructions" to leave Latvia within seven days without the right to re-enter the country. No law on citizenship has yet been adopted, and as a result, officials in many cases continue to treat applications by Russian-speaking inhabitants in an arbitrary fashion. The draft of such a law adopted as a basis for consideration in Parliament provides for naturalization on the basis of annual quotas; however, these would apply not to persons entering the country but to its permanent residents, including those who were born in Latvia and have lived there for decades. A law on municipal elections now being drafted would deprive more than one third of the permanent residents of the country of their rights of suffrage. In other words, it goes even farther than a similar, and far from ideal, law in the Republic of Estonia.

Our heightened attention to the problems of the Russian-speaking population in Estonia and Latvia is not a manifestation of some tendentious attitude towards these two countries. In their conclusions and recommendations, missions sent there by the United Nations, the Conference on Security and Cooperation in Europe, the Council of Europe and human rights organizations have confirmed the grounds for our concern. Unfortunately, in Estonia and Latvia these recommendations are to a large extent ignored, and at times there is a complete silence. The measures taken to implement them are as a rule purely cosmetic in nature.

In these circumstances the Russian Federation considers that the United Nations and other international organizations must not remain indifferent to the unfolding situation in the field of human rights in Estonia and Latvia.

By continuing to consider this question, the United Nations might assist in creating in those countries a climate of national consensus and civil peace, and in building genuinely democratic States founded on the rule of law.

Of course, we are aware of the existence of other problems in our mutual relations with Estonia and Latvia arising from a whole range of historical circumstances.

In our view, however, these must not overshadow the main issue - the need to protect the Russian-speaking inhabitants of Estonia and Latvia from political, social and police tyranny. The mandate of the United Nations in the humanitarian field must continue to be utilized to the fullest extent.

We know, of course, about the efforts being undertaken by the international community, especially the United Nations, to that end. We feel that a serious approach is being taken to this problem: consequently, some progress has been discerned but, regrettably, there have also been relapses in the resolution of issues affecting the lawful rights and interests of the Russian-speaking inhabitants of Estonia and Latvia.

In a word, it is necessary to continue to follow closely the evolving situation with respect to human rights in Estonia and Latvia, and we are deeply convinced that the United Nations is called upon to play a leading role in this

matter. That is why we consider it necessary to retain the item entitled "Situation of human rights in Estonia and Latvia" on the agenda of the General Assembly.

I request you to have this letter distributed urgently as a document of the General Assembly under agenda item 115.

(Signed) Y. VORONTSOV



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SITUATION OF HUMAN RIGHTS IN ESTONIA AND LATVIA

Letter dated 29 November 1993 from the Permanent Representative of
Latvia to the United Nations addressed to the Secretary-General

I have the honour to transmit written comments prepared by the Human Rights Committee of the Saeima (Parliament) of Latvia regarding the recommendations found in the report of the United Nations fact-finding mission, which visited Latvia from 27 to 30 October 1992 (see annex).

I should be grateful if you would have the text of this letter and its annex circulated as a document of the General Assembly under item 115 of the agenda of the forty-eighth session.

(Signed) Aivars BAUMANIS
Permanent Representative

Annex

Comments by the Human Rights Committee of the Saeima (Parliament)
of Latvia regarding the recommendations contained in the report
of the United Nations fact-finding mission which visited Latvia
from 27 to 30 October 1992

Recommendation 26 (a)

On 25 November the Latvian Saeima (Parliament) considered and debated the five existing draft legislative bills on citizenship (drafts were submitted by the governing coalition of Latvia's Way and Latvia's Farmers' Union, LNNK - the Latvian National Independence Movement, Fatherland and Freedom, Harmony for Latvia and the Equal Rights factions). These five draft bills had previously been sent to the Saeima standing committees for review and were then debated at the 25 November plenary session. The Saeima plenary session voted by secret ballot to adopt the governing coalition's (Latvia's Way and Latvia's Farmers' Union) draft bill as the basis for the second reading (53 votes in favour to 28 against with 6 abstentions).

The governing coalition has committed itself to incorporate as much as possible from the LNNK and the Harmony for Latvia drafts, in order to achieve a broader acceptance of the draft citizenship law in the second and third readings. Previously, the Latvian Government had committed itself to send the draft citizenship law to Council of Europe legal experts for their review and comments. This review will be requested before the second reading.

The second reading may be held in late January or early February 1994, owing to the need to amend the governing coalition's bill and receive the Council of Europe recommendations prior to the second reading. The third and final reading may be sometime in March 1994.

The governing coalition has agreed with the LNNK request (supported by most of the other factions in the Saeima) to submit the finalized Saeima citizenship bill to a vote of the citizens' referendum. Under paragraphs 72 to 74 of the Latvian Constitution, the citizenship law is not prohibited from being submitted to the citizens for their approval at a citizens' referendum. Within seven days of the final reading/acceptance of the draft law by the Saeima, one third of the Saeima members may petition the President of Latvia to suspend the law for a two-month period. During these two months one tenth of the registered Latvian voters must petition for such a referendum. If a referendum is requested, then one half of the eligible voters (those who participated in the previous Saeima elections) must vote in the referendum for it to be valid. Unless one half of the participating voters plus one reject the law at the referendum, the President will sign and accept the law as final.

On 25 November the Saeima approved the first reading of the law to reinstate the rights to such a citizens' referendum (as provided by paragraphs 72 to 74 of the Constitution) and stated that the second reading should be held only after the necessary amendments to the Constitution (changing voting age from 21 to 18 years to make the Constitution correspond to the fifth Saeima election law) are adopted.

Recommendation 26 (b)

The 16 years' residency requirement mentioned stems from the 15 October 1991 Latvian Supreme Council resolution on the renewal of the Republic of Latvia citizens' rights and fundamental principles of naturalization. As to naturalization principles this resolution is not legally binding on the current Latvian Saeima.

The governing coalition's draft citizenship law, which was approved at the Saeima's 25 November 1993 plenary session, currently states a 10-year residency requirement, counting retroactively from the individual's submission of his/her naturalization application.

Recommendation 26 (c)

On 23 November 1993, the Latvian Government at its Cabinet meeting suspended Mr. Maris Plavnieks from his position as Director of the Citizenship and Immigration Department for a 10-day period pending review of his work by a special Government-appointed task force, headed by Mr. Romans Apsitis, Parliamentary Secretary of the Ministry of Justice. The concerns raised on this point will be reviewed by this task force as they were reviewed by the Saeima Standing Committee on Human Rights at its 9 November 1993 meeting. The Saeima Human Rights Committee recommended that the Government create a task force to review the work of the Department's management and create an independent review/appeal institution that would review and audit the work of the Department and review appeals of Department decisions.

Recommendation 26 (d)

On 4 May 1990, the Latvian Supreme Council ratified 51 international instruments relating to human rights, including the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live of 13 December 1985. The rights stated therein are, for the most part, guaranteed by the 10 December 1991 Latvian Constitutional Law "The rights and obligations of a citizen and a person" (which is the equivalent of the Bill of Human Rights article of the Constitution).

The Saeima has not yet adopted a law which clarifies the legal status of those non-citizens who entered or were born in Latvia's territory between 17 June 1940 (date of the Soviet occupation of Latvia) and 1 July 1992 (the date upon which the current law regulating entry and residency in Latvia took effect).

It is not anticipated that the Saeima or the Latvian Government will adopt any measures that would be in conflict with the above-mentioned Declaration of 13 December 1985.

Recommendation 26 (e)

The governing coalition's draft citizenship law states that all applicants for Latvian citizenship naturalization should have a conversational level of Latvian language ability, but exempts persons over 65 years of age from this requirement.

Recommendation 26 (f)

Currently, only cooperative apartments can be legally transformed into privately owned property and can be privatized by Latvian citizens and non-citizens alike. Other types of apartments (except for entire apartment buildings previously owned as of 17 June 1940 by individuals, whether Latvian citizens or non-citizens), are still not subject to legal privatization, since no law has yet been adopted by the Saeima.

As far as the laws regarding land and houses previously owned by individuals as of June 1940 the Latvian Government is reviewing these laws from an equity basis.

Recommendation 26 (g)

See information recommendation 26 (f). Land ownership is restricted to Latvian citizens, but ownership of houses and apartments is not limited to Latvian citizens. The Central Land Commission reviews appeals of lower-level local government decisions regarding the land ownership rights and claims regarding rural and urban land. Local municipal governments have special commissions which review claims for houses and buildings. All decisions may be appealed to the Court.

Recommendation 26 (h)

Steps are being undertaken to strengthen dialogue with the National Cultural Society Association.

Paragraph 16 of the Latvian Law about the unrestricted development and right to cultural autonomy of Latvia's nationalities and ethnic groups, adopted on 19 March 1992, read as follows: "Any activity directed toward nationality (ethnic) discrimination or the promotion of national (ethnic) superiority or national (ethnic) hatred is punishable in accordance with existing law."

Recommendation 26 (i)

Currently, the Saeima standing committees are reviewing a proposal to accede to the Optional Protocol to the International Covenant on Civil and Political Rights.

Recommendation 26 (j)

Preliminary discussions regarding such advisory services and technical assistance have been held with the United Nations Development Programme (UNDP) Resident Representative in Riga, Latvia, Mr. Jon Hendra.

Recommendation 26 (l)

Such technical assistance regarding the methodology of teaching and examination of the Latvian language has been among the topics discussed with the UNDP representative in Riga.

Recommendation 26 (m)

The possibility of such technical assistance is being discussed with the UNDP representative in Riga.

Recommendation 26 (n)

Refer to recent developments in United Nations and Special Envoy Tommy Koh's visit to Latvia.



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SITUATION OF HUMAN RIGHTS IN ESTONIA AND LATVIA

Letter dated 29 November 1993 from the Permanent
Representative of Estonia to the United Nations
addressed to the Secretary-General

I have the honour to bring to your attention an issue of great concern to the Republic of Estonia: accusations by the Russian Federation of human rights violations in Estonia.

In particular, I would like to refer you to a recent letter from the Permanent Representative of the Russian Federation to the Secretary-General, dated 23 November 1993 (A/C.3/48/18), in which a number of groundless attacks were made against Estonia's human rights record.

The Russian Federation claims that the Estonian authorities have adopted legislative and administrative acts which have worsened the situation of a large portion of Estonia's population. In reality, Estonia has enacted legislation which guarantees the human rights and fundamental freedoms of every inhabitant of Estonia and promotes and protects the rights of persons belonging to national or ethnic, religious and linguistic minorities. According to the report of the Secretary-General (A/48/511) on agenda item 115, entitled "Situation of human rights in Estonia and Latvia", the Estonian Constitution, the Estonian Law on Citizenship and the Estonian Language Law are compatible with general principles of international human rights law. Estonia's recently adopted Law on Cultural Autonomy of Minorities was praised by the High Commissioner on National Minorities of the Conference on Security and Cooperation in Europe (CSCE), Mr. Max van der Stoep, who stressed that the law could be used as a model for other countries. The accusations by the Russian Federation regarding Estonian legislation which discriminates against the ethnic Russian population in Estonia are without merit.

The Russian Federation's claim that Estonia is ignoring recommendations made by international experts, or is implementing purely cosmetic measures in response to recommendations by a number of recognized human rights experts and organizations, is not true. Estonia's Parliament passed its Law on Aliens in

July 1993 in accordance with recommendations made by experts from CSCE and the Council of Europe. The President of Estonia requested reviews by these two organizations to ensure that the law would be fully in keeping with international norms and standards. Estonia has implemented other recommendations into law, including a suggestion by the CSCE fact-finding mission in December 1992 that the language requirements for the acquisition of Estonian citizenship be significantly lowered.

Pursuant to the Estonian Law on Aliens, the Estonian Government approved a decree establishing a procedure for granting residence permits to retired foreign military personnel and their families who retired in Estonia before Estonia regained its independence. Foreign military personnel who were on active duty in Estonia after Estonia regained its independence and subsequently were demobilized, as well as members of the former Soviet security system, will be asked to leave Estonia. Although under common international practice foreign military personnel are not eligible for residency permits on the territory of another State, Estonia has decided to take this step out of humanitarian considerations for those individuals for whom the Russian Federation, despite its moral and legal obligations, has not provided decent opportunities to return home. This is a noteworthy move for Estonia since Russian troops still remain in Estonia against Estonia's will and, in fact, outnumber the Estonian defence forces two to one.

The conclusions of United Nations and other fact-finding missions to Estonia have revealed no evidence of systematic human rights violations. Thus, there is no ground for the concerns expressed by the Russian Federation regarding the human rights situation in Estonia. The Russian Federation's disregard for the conclusions of these fact-finding missions undermines the human rights mechanisms of the United Nations, to which the international community attaches great importance.

Even though the Estonian Government has invited international experts and welcomed their recommendations for facilitating the integration of resident aliens into their societies, the Russian Federation consistently refuses to recognize the conclusions of impartial experts. This pattern of refusal has become more pronounced despite positive developments in traditionally tolerant and democratic Estonia, and it adversely affects confidence-building among the residents of Estonia and the Russian Federation.

Estonia is distressed by the Russian Federation's manipulation of the Russian-speaking population in Estonia to justify Russia's interference in Estonia's internal affairs when Estonian national legislation and human rights practices are in conformity with international standards.

Russian officials have made statements linking the Russian Federation's strategic interests in neighbouring States with human rights issues. The Russian Federation's claims of protecting the human rights of ethnic Russians in Estonia for the apparent sake of Russian domestic partisan political purposes has made the task of furthering good-neighbourly relations between Estonia and the Russian Federation more difficult.

Estonia is appalled by the Russian Federation's use of the phrase "ethnic cleansing" to describe the policy of the Estonian Government towards its ethnic

Russian population. The use of such terminology in these circumstances trivializes the very real and tragic problems of ethnic cleansing in other parts of the world.

Estonia is sensitive to the many political problems facing the Russian Federation today, in particular the constant internal challenges to fragile democratic institutions by Russian nationalists and extremists. Estonia supports all efforts towards democratic practices in the Russian Federation. Still, many Russian officials continue to regard the former Soviet republics and the Baltic States as their special sphere of influence. Estonia is disturbed by the trend towards acquiescence to such extremist Russian positions and hopes that democratic institutions and respect for the human rights of all people living in the Russian Federation will develop through peaceful means.

The Russian Federation's accusations of human rights violations in Estonia are unsubstantiated. Numerous human rights missions have found no evidence of systematic human rights violations or discriminatory practices in Estonia. Continued discussion of agenda item 115 would thus violate the principles of objectivity, non-selectivity and impartiality. In the light of the above, there is no need to continue this agenda item at next year's session of the General Assembly.

I request that you distribute this letter as a document of the General Assembly under agenda item 115.

(Signed) Ernst JAAKSON
Permanent Representative



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Agenda item 114 (a)

HUMAN RIGHTS QUESTIONS: IMPLEMENTATION OF HUMAN RIGHTS
INSTRUMENTS

Summary account of the results of the proceedings
concerning the inquiry on Turkey

Letter dated 29 November 1993 from the Permanent Representative of
Turkey to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the views of the Government of the Republic of Turkey with regard to the "Summary account of the results of the proceedings concerning the inquiry on Turkey" of the Committee against Torture, contained in the addendum to the report of the Committee (A/48/44/Add.1).

I should be grateful if the text of the present letter and its annex were circulated as a document of the General Assembly under agenda item 114 (a).

(Signed) İnal BATU
Ambassador
Permanent Representative

ANNEX

The views of the Government of Turkey with regard
to the "Summary account of the results of the
proceedings concerning the inquiry on Turkey"
of the Committee against Torture *

* Circulated in the language of submission only.

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Introduction

1. The Committee Against Torture initiated a confidential procedure on Turkey in April 1990 and concluded its work in November 1992. Mr. A. Dipande Mouelle and Mr. J. Voyame who were designated to make the inquiry made a visit to Turkey from 6 to 18 June 1992. The two members presented their confidential report (CAT/C/IX/Misc.9) to the Committee in November 1992 and transmitted it to the Turkish Government on November 18, 1992. The Committee has decided to publish a "summary account" on the results of its undertakings, at its 11th session held in November 1993. It appeared as document A/48/44 Add.1.

2. Turkey was the first country to which the Committee applied a confidential procedure. Although the Turkish Government considered this decision of the Committee inappropriate, it closely cooperated with the Committee in accordance with Article 20 of the Convention. The Government of Turkey entered into this cooperation with the belief in the good-faith of the members of the Committee while bearing in mind that the general philosophy of the Convention was based on a constructive cooperation between State parties and the Committee. But the Committee acted more like an instance of judgment rather than an instance of cooperation on human rights.

The Turkish Government was disappointed at the approach and the method adopted by the Committee.

3. Although the Committee concedes that "only a small number of torture cases can be proved with absolute certainty", it, nonetheless, reaches a judgment as serious and grave as "the existence and systematic character of the practice of torture" (para. 38) in Turkey, mainly on the basis of allegations.

It should be recalled that such more detailed and time-consuming work of the European Committee for the Prevention of torture did not make such a grave accusation against Turkey.

Since the inquiry on Turkey, being the first within the framework of Article 20, sets a precedent, the Turkish Government deems it appropriate to draw some lessons from it for the benefit of the UN General Assembly and parties to the Convention.

The Allegations

4. The Committee initiated and concluded this confidential procedure on the basis of allegations communicated to it by some NGO's. However, none of these allegations is supported by "clear evidence", which is the basic criterion for admissibility of communications in the UN human rights system.

4.1. In this context, the Turkish Government in a letter dated March 5, 1992 put, among others, the following questions to Amnesty International which had forwarded to the Committee the first set of "information" containing allegations against Turkey.

- "How does your organization interpret the concept of "clear evidence" which should back up communications of allegations... ?"

- "How does your organization justify publishing unchecked allegations... when domestic as well as international judicial means are available for the 'victims' of human rights violations ?"

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4.2. Amnesty International's reply of April 26, 1993 stated that the allegations "are supported by a wide range of evidence: court judgments, official documents, medical certificates and photographs".

Nevertheless, all the reports of Amnesty International, including presumably the one which was presented to the Committee, are full of allegations without any 'evidence'. This NGO always criticises the courts and forensic medicine of the countries in question. It is impossible to understand what it means by "official documents". Photographs are not recognized as evidence by most judicial systems, for it is very difficult to verify them.

Therefore, it appears that, as it refers in its letter, Amnesty International uses as 'evidence' "press reports, interviews with victims, lawyers, relatives, and political parties". Amnesty International is unable to produce objectively convincing evidence to support these allegations.

4.3. It also appears that the work of Amnesty International is influenced by political motivations. Following Turkish Government's application to EC for membership Amnesty International's attitude towards Turkey reveals glaringly the extent of its politicisation. In 1987, when Turkey made its request for membership, Amnesty International had confined its views on Turkey to a report of 21 pages. In 1988 it published 45 pages. And in 1989, the year when the European Commission made public its "opinion" on Turkish accession, its reports went up to 141 pages. In the UN human rights system, the absence of political motivation in allegations is another important criterion of admissibility.

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4.4. It is this kind of "information" that the Committee found "credible" and "well-founded" to indicate "that torture was practised systematically in Turkey" at the beginning of its inquiry' (para.5 of the Summary Report. (*) In its final declaration (para. 58), the Committee remained on this initial premise of allegations, while pointing out that "the existence and the systematic character of the practice of torture" were confirmed by "the number and substance of the allegations". In other words, the statistics on allegations without "clear evidence" largely determined the erroneous nature of the judgment by the Committee on Turkey, since the Committee conceded that "only a small number of torture cases can be proved with absolute certainty".

4.5. In a situation where terrorism is perpetrated by a group upholding a totalitarian ideology and inciting ethnic and secessionist aspirations, it is quite easy to use the communication system for the purpose of its struggle.

(*) The Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights decided at its 44th Session in August 1992 to close the file which had been initiated by Amnesty International within the framework of the confidential procedure of 1503. The fact that the allegations forwarded by this NGO were not supported by "clear evidence" and were not accompanied by information about domestic remedy while Amnesty International did not take into account terrorism in Turkey might be the reason which led the Sub-Commission to this decision.

The Committee refers to the consistency of the 'testimonies' (since the Committee is not a juridical instance to take testimonies, we should rather call them 'interviews' with individuals) regarding the description of the torture techniques, places and circumstances in order to support its conclusions. This consistency in allegations and interviews, however, may be more a sign of a smear campaign launched by the individuals or associations close to or affiliated with the terrorist organization, by repeating identical and stereotyped allegations, they wish to blame the Government and its security forces in the eyes of those who, for various reasons, tend to support, magnify and legitimize these allegations. This tactic can be put to use all the more easily in a democratic country like Turkey.

5. Even though the Committee Against Torture had to recognize that the existence and systematic character of torture in Turkey could not be proven with absolute certainty, despite the visit performed by two of its members to Turkey and the freedom of access accorded to them, this situation did not preclude the Committee from reaching the above-mentioned conclusion. This conclusion relies heavily on the reports of NGO's, whose objectivity and impartiality are, as indicated earlier, questionable. It should also be underlined that no communication by or on behalf of any individual subject to Turkey's jurisdiction has ever been submitted to the Committee Against Torture under article 22 of the Convention. (*)

(*) Furthermore, Turkey is one of those members to the Council of Europe against which the least number of individual communications of torture has been filed.

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Neither the Committee, nor its members designated to make the inquiry have requested the view of the Turkish Government on the allegations included in the report. It is also understood that the replies of the Turkish Government forwarded earlier to various human rights instances regarding most of these allegations have not been consulted either.

In view of the above, the Turkish Government opines that the Committee Against Torture has set an unfortunate precedent regarding the implementation its mandate for the confidential procedure.

Errors and Omissions

6. The "confidential" report (CAT/C/IX/Misc.9) that Messieurs Dipanda Mouelle and Voysme prepared following their visit to Turkey, is dominated by some crucial errors and prejudices of form and substance. In the summary account these erroneous elements do not appear. The fact that these have been severely criticised in the Turkish Government's responses must have led to their omission. Nevertheless, the summary account repeats the confidential report's conclusions. Given that these erroneous elements have, by their nature and gravity, considerably influenced the conclusions of the whole procedure, they need to be made public and openly discussed.

6.1. In the report, the situation in the South-east is described as a conflict between Turkish security forces and the Kurdish population. An attempt is thus made to broaden the context of a combat against a terrorist organisation. It is this warped perception of an alleged ethnic conflict that dominates the report and its conclusions.

Some of the errors and omissions highlighting this approach are mentioned herebelow:

6.2. The report claims that "in the southeastern region there is a sizeable "Kurdish population" estimated at 12 million" (para.19)

It must be noted that the entire population "in the southeastern region" is 2.9 million and not all of them are Kurds. The great majority of "Kurds" live in peace and harmony in the Western parts of Turkey. Most of the violent incidents take place in an area adjacent to Iraq and Syria.

6.3. The report calls the Southeast region of Turkey as "Kurdistan" (para's. 20, 47, 87 and 184).

In Turkey, an area with the name "Kurdistan" exists neither geographically, nor administratively. The use by a UN convention body of geographical names not accepted by member states is totally inadmissible (*).

(*) "... geographical names given and/or standardized by a body other than that nationally authorized should not be recognized by the United Nations..." (Third UN Conference on the Standardization of Geographical Names, Athens, 17 August-7 September 1977, Vol.1, Report of the Conference, UN Publications, Sales no. E.79.I.4, chapter III).

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6.4. The report does not contain any reference to "terror", "terrorist" or "terrorism". The terrorist organisation PKK is denominated in the report as "PKK guerillas", "Kurdish rebels", "PKK combatants", "armed opposition groups", and "PKK activists" (para's 34, 97, 184, 214, 220, 227 and 228).

The conflict in Southeast Anatolia is between security forces and a terrorist group which calls itself PKK. Ever since the launching of its terrorist campaign in 1984, the PKK has mainly targeted civilians, mostly women, children and elderly (the PKK has assassinated more than 2000 civilians of mainly Kurdish origin). It raided villages, fired at cafés and buses, derailed trains, attacked schools, hospitals, government buildings, and destroyed development projects, thus terrorising the population and condemning the region to misery and backwardness within a democratic and economically booming country.

In international law, a group which commits terrorist acts, methods and practices is terrorist, no matter what its political aspirations are. To call terrorists anything but terrorist gives an impression of condoning their crimes, even indirectly legitimizing them. It is in this spirit that most of the UN member states condemn the PKK as a terrorist organisation.

Moreover, in Turkey there is no political crime, nor political prisoners, nor prisons for them. To qualify terrorism as political crime is to legitimize it. It is not possible to subscribe to an understanding which identifies "possessing/throwing explosives" with political crimes.

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The fact that acts of violence perpetrated by armed groups are mildly and furtively condemned in para.40 of the summary account does not diminish the gravity of the errors and omissions characterising the general approach of the report's authors.

Conclusion

7. It goes without saying that such factual and substantive errors show that the two members of the Committee conceived of an illusory context of ethnic conflict in which the security forces were presented as an instrument of repression against the entire Kurdish population. This context naturally gave rise to a perception of the existence and systematic character of torture in Turkey.

8. Briefly, the conclusions of the report which allege the existence and systematic character of torture in Turkey are based on the interaction of two precarious assumptions :

First, allegations not supported by "clear evidence", communicated mainly by individuals close to the PKK and relayed by certain NGO's, were considered credible and well-founded.

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Second, an ethnic approach which omits PKK terrorism and presents the security forces' combat with terrorism as repression against "12 million Kurds" in "south-east Turkey", mentioned as "Kurdistan", was adapted to create the context of "torture".

The authors of the report tried to vindicate these assumptions on the occasion of their visit to Turkey. They saw things the way they wanted to see them.

Such an approach to their inquiry naturally led the rapporteurs to detect all sorts of elements which could be qualified at best as "circumstantial evidence" for the systematic character of torture in Turkey. being fully aware, however, that "only a very small number of torture cases can be proved with absolute certainty". The term "a very small number" has to be defined as well.

9. It turns out that human rights bodies should take into consideration the various aspects of the mission to be carried out, while nominating its members for these missions. One should think whether it was appropriate for the Committee to select for a mission with ethnic overtones, one of its members coming from a country which, due to its own ethnic particularities, has always been inclined to show a ready comprehension towards ethnic dissensions in other countries.

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10. Notwithstanding the above criticism directed at the report prepared by the two members of the Committee, the Turkish Government admits that sporadic cases of torture may occur in Turkey. It is extremely difficult to entirely eradicate torture, when faced with terrorism of such scope and intensity. These challenges compel governments to become even more vigilant in their combat against torture. It is with this understanding that the Turkish Government continues to take and implement necessary measures, both in legislation and in practice, in order to eliminate this crime. The summary account of the Committee contains, to a certain extent, information regarding these measures and their implementation. Indeed, these measures were included in the Government's action programs.

11. It is important to underline that a combat against a group as savage as the PKK necessitates inevitably a longer period of police custody for suspects of terrorist crimes in the regions under the state of emergency. The government must give priority to the protection of the right to life of people living in this region. Such durations of custody do not justify allegations of torture. For the time being, they remain necessary in combatting the kind of terrorism which currently exists in Turkey.

All international organisations entrusted with the promotion of universal respect for human rights should, without resorting to mild or evasive condemnations, declare unequivocally that terrorist acts aiming at the lives of innocent civilians constitute the gravest form of human rights' violation. The primary mission of the security forces is to eliminate this threat against the most essential of human rights. It is very difficult to imagine that a study which is devoid of these fundamental aspects could produce worthy and useful conclusions.

Unfortunately, this is the case with the confidential procedures whose conduct and conclusions are far from making any meaningful contribution to Turkey. It is highly doubtful that the inquiry, in the way it has been realised, will contribute to the spirit of cooperation between States Parties and the Committee. On the contrary, the possibility that the Committee's work may be used by the terrorists for justifying the horrors they commit, constitutes a serious cause for concern.

Recommendations

The Government of Turkey would like to make the following recommendations regarding the Committee's working methods in the application of the confidential procedure :

1. Before taking a decision on confidential procedure, the Committee should forward all allegations to the State party concerned and elicit its views.

2. The general context to be described in the confidential report in which torture allegations will be examined should be prepared in full cooperation with the State party concerned in order to avoid factual mistakes and crucial errors of approach.

3. The Committee should be extremely careful in designating its members to make an inquiry. For instance, a member who may tend to a pro-ethnic approach, because of his country's historical characteristics, should never be designated for a case with ethnic overtones. At a time when clashes of civilisations are the order of the day, the risk of prejudices, including religious ones, should also be taken into account.

/...

4. The Committee should comply with the UN rules on geographical denominations.

5. In no way, should the conclusions of an inquiry be conducive to interpretations against the territorial integrity and political unity of the State parties.

6. In no way, should the conclusions of the inquiry be conducive to condoning the most serious violation of human rights, namely the killing of the innocent under the pretext of eliminating torture.

7. The reply of the State party to the confidential report should be annexed to the summary account, if the latter is to be published.

These conditions, commonly applied by other international bodies dealing with human rights, constitute the bare minimum for the orderly conduct of the work of the Committee.

Unless they are fulfilled, the States Parties may wish to consider whether the necessary prerequisites exist which would be conducive to a constructive and confidential dialogue between the States Parties and the Committee.



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RIGHTS OF PEOPLES TO SELF-DETERMINATION: EFFECTIVE REALIZATION
OF THE RIGHT OF SELF-DETERMINATION THROUGH AUTONOMY

Letter dated 30 November 1993 from the Permanent Representative of
Yugoslavia to the United Nations addressed to the Secretary-General

Upon instructions of my Government, I have the honour to forward the following comments concerning agenda item 108 (b) entitled "Effective realization of the right of self-determination through autonomy".

The principle of the right of peoples to self-determination, internationally recognized by the Charter of the United Nations, has been further developed by subsequent United Nations documents, namely by the Declaration on the Granting of Independence to Colonial Countries and Peoples, 1/ the International Covenants on Human Rights 2/ and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 3/ which enabled the right to self-determination to become a universal principle of the international community. This principle gained full recognition, especially in the decolonization period, because as a result of its application a number of newly independent States emerged, which contributed to greater emancipation and democratization in international relations.

However, in the past few years, the action taken in the name of the right of peoples to self-determination, especially in Europe, has been in contravention of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations which, inter alia, prohibits "authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples ...". This Declaration also provides that "every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country".

The breakup of the former Socialist Federal Republic of Yugoslavia is an example where the right to self-determination has been reduced to the "right of violation of territorial integrity". In practice, it has been recognized as a right to secession which directly testifies to the wrong approach by a part of the international community concerning the right of peoples to self-determination.

Self-determination in the form of secession was essentially carried out through force by some former Yugoslav federal units.

The international community, acting under the pretext of the protection of the right of peoples to self-determination, prematurely recognized the secessionist republics. At the same time, it denied the Serbian people its equal right to self-determination, thereby violating both the principles of international law and of the Charter of the United Nations as well as the provisions of the last Constitution of the Socialist Federal Republic of Yugoslavia.

The right to self-determination in this case has been granted to the federal units, republics of the former Yugoslavia and not to all its peoples. Priority has been given to internal borders, which have not been internationally recognized, over the international ones.

The right of peoples to self-determination has to be exercised in full conformity with the Charter of the United Nations and other relevant international legal documents only after all necessary preconditions have been fulfilled. First, the principle of the right of peoples to self-determination has been established in order to facilitate the achievement of world peace. If the implementation of this principle is to lead to conflict or internal strife which threaten peace, it is not to be considered acceptable in the particular case. Secondly, in all major international documents, the right of peoples to self-determination is directly connected to the principle of equality of all peoples. Thirdly, the right of peoples to self-determination cannot be in contravention of the principle of territorial integrity of States and, as such, cannot be exercised to its detriment, as has been recognized in many international documents.

Although the principle of the right of peoples to self-determination represents the basis for the guarantee and respect of human rights, national minorities, as collective entities, are not to be considered as subjects entitled to the right to self-determination. The right to self-determination is broader in its scope than the rights granted to national minorities in accordance with international standards. According to those standards, national minorities are not even entitled to the right to cultural autonomy, let alone to any kind of political autonomy.

The right of peoples to self-determination through autonomy envisaged for the members of the "community" is therefore unacceptable since international standards already regulate the rights of persons belonging to minorities. The tendency to expand the subject and substance of the principle of the right of peoples to self-determination or to link it with other subject-matters is counterproductive and can lead to the disintegration of States.

I should be grateful if you would have the present letter circulated as a document of the General Assembly under agenda item 108 (b).

(Signed) Dragomir DJOKIC
Ambassador
Charge d'affaires a.i.

Notes

- 1/ Resolution 1514 (XV).
- 2/ Resolution 2200 A (XXI), annex.
- 3/ Resolution 2625 (XXV), annex.



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REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR
REFUGEES, QUESTIONS RELATING TO REFUGEES, RETURNEES
AND DISPLACED PERSONS AND HUMANITARIAN QUESTIONS

Letter dated 29 November 1993 from the Permanent Representative of
Turkey to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a letter addressed to you by His Excellency Mr. Osman Ertuğ, Representative of the Turkish Republic of Northern Cyprus.

I should be grateful if the text of the present letter and its annex were circulated as a document of the General Assembly under agenda item 113.

(Signed) Inal BATU
Ambassador
Permanent Representative

Annex

LETTER FROM MR. OSMAN ERTUĞ ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to refer to a statement made by the Greek Cypriot delegate at the meeting of the Third Committee on 8 November 1993, under agenda item 113 entitled "Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees, and displaced persons and humanitarian questions".

As it has become habitual practice for the Greek Cypriot administration, the Greek Cypriot delegate has again seized this opportunity to demonstrate his side's deep-seated hostility towards the Turkish Cypriot people and its utter disregard for Turkish Cypriot rights. This is yet another instance of the abuse of the title of "the Government of Cyprus" by the Greek Cypriot side, a title which it usurped by force of arms in 1963 at our expense. I am, therefore, obliged to respond to his unfounded allegations in writing, in exercise of our right of reply. I am grateful to the Republic of Turkey for enabling me to do so.

The Turkish Cypriot side believes that the subject of refugees and displaced persons is a humanitarian issue which should not be exploited for propaganda purposes. Our conduct in dealing with this issue as the first party to suffer from this problem in Cyprus is a testimony to our sincere and humanitarian approach to the matter.

The Secretary-General's reports of the 1963-1974 period abound with evidence of the suffering inflicted upon our community, one fourth of which had been rendered refugees as a result of the Greek Cypriot attacks on us aimed at breaking our resistance to the annexation of the island to Greece (enosis) and the campaign of ethnic cleansing it involved. A few examples would help to refresh the memories of those who tend to forget or ignore the origins of this problem:

"126. When the disturbances broke out in December 1963 and continued the first part of 1964, thousands of Turkish Cypriots fled from their homes, taking with them only what they could drive or carry, and sought refuge in what they considered to be safer Turkish Cypriot villages and areas ..." (S/8286, 8 December 1967).

A more detailed account of the suffering imposed upon the Turkish Cypriot people by the refugee problem can be found in the following extract from the Secretary-General's report, S/5950 of 10 September 1964:

"190. In addition to losses incurred in agriculture and in industry during the first part of the year, the Turkish community had lost other sources of its income, including the salaries of over 4,000 persons who were employed by the Cyprus Government and by public and private concerns located in the Greek Cypriot zones. The trade of the Turkish community had considerably declined during the period, owing to the existing situation, and unemployment reached a very high level, as approximately 25,000 Turkish Cypriots had become refugees. Expenditure of the Turkish Communal Chamber

on development and other projects, as well as other expenditure, had dropped considerably as a yearly subsidy formerly received from the Government had ceased to be granted in 1964. Furthermore, a large part of its remaining resources had to be used for unemployment relief and other forms of compensation as approximately half of the population came to be on relief. In accordance with figures published by the Turkish Cypriot Communal Chamber, the number of persons receiving some kind of assistance from the Red Crescent relief amounted to about 56,000, including 25,000 displaced persons, 23,500 unemployed and 7,500 dependents of missing persons, disabled and others."

All efforts aimed at the return of these refugees to their homes and their rehabilitation in the ensuing 11 years were frustrated by the Greek Cypriot side.

This is the origin of the present situation, as also confirmed by the following extract from a Council of Europe report by Mr. Franz Karasek, the then General Rapporteur of the Political Affairs Committee (see document 3600, para. 11, dated 10 April 1975):

"Economic, social and educational inequality, as well as insecurity for personal life, during the last eleven years, were the origins of inter-community mistrust and fears, of political tension and regional as well as communal isolation between the Turkish Cypriot and the Greek Cypriot populations ... This created in the Turkish community the feeling of being underprivileged and oppressed ... Humanitarian suffering was at the origin of an eleven-year-long Cyprus crisis."

Thus the Greek Cypriot side's charges on the issue are clearly misdirected, as the Greek Cypriot side has only itself to blame for the displaced persons problem arising out of the events of 1974 and affecting both sides, which, in any event, were the inevitable consequence of the Greek Junta's coup d'état of 15 July 1974. More than half the Turkish Cypriot population of the island left their homes, many of them for the second or third time, as a result of the events triggered by the coup, and regrouped in Northern Cyprus where they could find a safe haven.

The regrouping of each of the two peoples in a separate part of the island was formalized between the two sides at the third round of the inter-communal talks held at Vienna from 31 July to 2 August 1975, where the two sides agreed on a voluntary transfer of their remaining populations to their respective zones, Turkish Cypriots to the North and Greek Cypriots to the South (see the annex to S/11789, dated 5 August 1975). This agreement on an exchange of populations was implemented under the supervision and assistance of the United Nations Peace-keeping Force in Cyprus and the way was paved for a bi-communal, bi-zonal settlement on the island (see S/11789 Add.1, dated 10 September 1975).

The solution of the Cyprus question on the basis of a bi-communal, bi-zonal federation was agreed upon between the leaders of the two sides, President Rauf Denktas and Archbishop Makarios, at the high-level meeting of 12 February 1977, and has since constituted the basis of the negotiating process. This agreement was reaffirmed by another High-Level Agreement between President Denktas and Mr. Kyprianou, reached on 19 May 1979. The principles of

bi-communality and bi-zonality as the fundamental features of a federal solution have also been repeatedly reaffirmed by the reports of the Secretary-General and relevant United Nations resolutions.

The Greek Cypriot views and demands on the question of displaced persons confirm our long-held belief that the Greek Cypriots are bent on re-creating the unacceptable conditions of the pre-1974 period, when they could treat the Turkish Cypriots, then dispersed among them, as mere hostages and political pawns. Our people, who were then attacked, massacred, harassed and mistreated, cannot be expected to put themselves, once again, in such a position of vulnerability.

Our peoples legitimate fears and aspirations in this respect were echoed in an article by the prominent British journalist-author Roger Scruton, which was published in the London Times on 22 November 1983 under the heading "Who will heed the Turks of Cyprus?" Below is a relevant extract:

"During subsequent negotiations, the Greek Cypriots refused to contemplate any solution that recognized the legal personality of the Turkish community: the Turks were to remain a minority, protected by a bill of 'minority rights', and therefore dispersed among the people who had tried to murder them. The assumption that the Turks would even consider something so mad is a fair expression of the contempt in which the Greek Cypriots hold their fellow islanders."

Even more ominous for the Turkish Cypriots in this respect are the public lamentations of Archbishop Chrisostomos, the head of the powerful Greek Orthodox Church of Cyprus, that the Greek Cypriots no longer enjoy the possibility of using terror and violence against the Turkish Cypriots. His shocking remarks, which are extracted from a statement published in the Greek Cypriot daily Makhi on 22 March 1993, speak for themselves and therefore require no elaboration:

"Had our people lived within the occupied areas, we would have been able to wage guerilla warfare. Unfortunately, our people fled these places and left the Turks unchallenged in these areas."

I should be grateful if the present letter were circulated as a document of the General Assembly, under agenda item 113.

(Signed) Osman ERTUĞ
Representative
Turkish Republic of Northern Cyprus
